**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2949 OF 2004

Union of India & Ors.....Petitioners

Vs.

V.R.Patil & Ors.....Respondents

Mr. Y.S.Bhate, for the Petitioner.
Mr. S.P. Saxena, for Respondents

**CORAM : F.I.REBELLO &**
**ANOOP V. MOHTA, JJ.**
**DATED : 18TH AUGUST, 2006**

**P.C. :**

. Rule. Heard forthwith.

2. The challenge by the petitioner, Union of India and others is to the order of the Central Administrative Tribunal dated 28th June,2003 whereby the Original Application filed by Respondent Nos.1 to 5 has been allowed. Respondent Nos. 1 to 5 pursuant to the Scheme of ACPS were granted the same in the year 1999. In the year 2001 the Department of Personnel and Training issued a clarification which reads as under:-

> "As per clarification at Sl. No.38 of DOPT O.M. No.35034/1/97-Estt(d) (Vol.IV) dt. 18-7-2001 the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he cannot be said to be stagnating as she had opted to remain in the existing grade on his own volition as such, there is no case of grant of ACP."

. It will be clear from a reading of this

clarification, that the employee ought to have been offered promotion before the employee could be considered for grant of benefit under ACPS. This clarification was issued by the petitioners to the conditions for grant of benefits under the ACP Scheme.

. Para.5.1 of the conditions reads as under:-

> "5.1. The financial upgradations under the ACP Scheme in the entire Government Service Career of an employee shall be counted against regular promotions (including in situ promotion and fact track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only <u>if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee.</u> If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him." (emphasis supplied).

. A perusal of this clause would indicate that the employee had to avail of a regular promotion. In other words even if an employee had been considered and selected by way of promotion, but did not avail of regular promotion, in which event the ACP would still be allowable to such employee.

. The learned Tribunal in the impugned order has noted that the various orders by which the Applicants before it, were granted ACP. The Tribunal has also noted that the Applicants were offered promotion, but due to their family circumstances refused such regular promotions. The cause for the Respondents to move the Tribunal was the orders dated 16th December, 2002, 28th August, 2002 and 8th January, 2003 whereby the benefit of ACP was withdrawn and recovery was sought to be made from the Respondents. The learned Tribunal noted para.5.1 of the A.C.P.Scheme which we have adverted to earlier and held that it would cover a case even where an employee was scheduled for promotion, but was not actually promoted. The Tribunal found that the Respondents herein, had not availed of the promotion and as such the order withdrawing the benefit was without authority of law and consequently allowed the Original Application. It is this order which is the subject matter of the present petition.

2. On behalf of the Petitioners learned Counsel submits that the A.C.P. was introduced with a view that the employee should not be stagnated and this has been noted by the subsequent clarification issued on 18th July, 2001. In these circumstances it is pointed out, that the fact that the Respondents were offered promotion would indicate that there was no stagnation and as such the order of the Tribunal be interfered with.

3. We may firstly note, that the respondent No,.1 was offered promotion firstly on 4th October, 1998. The ACP scheme was notified from 9th August, 1999. As such the promotion with effect from 4-2-1998 could be of no consequence. The second promotion which was offered was from 7th June, 2002. Before this the Respondents had already been granted ACP and as such the clarification would not be applicable to him.

. In so far as Respondent No.2 is concerned, both the promotions were offered before the ACP Scheme was introduced and as such the clarification would not apply.

. In so far as the Respondent No.3 is concerned, two promotions were offered before ACP scheme came into effect and the third promotion was from 19th February, 2002 after the respondent was granted ACP. The

clarification, therefore, would not be attracted.

. In so far as Respondent No.4 is concerned, the first promotion was before the ACP scheme came into force and the second promotion was after ACP had already been granted. Hence the clarification also was not applicable. In so far as respondent No.5 both promotions were before the ACP had been brought into force and consequently the clarification would not be applicable.

. Factually, therefore, the petitioners acted without authority of law in withdrawing the benefit of the A.C.P. Scheme.

4. Even otherwise the clarifications are in the nature of administrative instructions. On the date when the respondents were granted the benefit, the administrative instructions which were in force clearly contemplated that the employee must have availed of the promotion. It is only by the clarification of 2001 was it clarified, that an employee who was offered promotion, but did not consider it before ACP was granted would be ineligible. This, therefore, would contemplate that it has to be from the date when the clarification was issued as the position earlier was that all employees who did not avail of promotion were to be given the benefit. In other words this could only

be prospective and not retrospective. Had the respondents, as an example, been informed that they will be denied ACPS if they refuse promotion, then their stand perhaps in refusing promotion would be different.

. On facts, all the Respondents were offered promotion before the ACP came into force or had already been granted ACP before the clarification was issued. In these circumstances the subsequent clarification issued pursuant to which the respondents are sought to be denied the ACP, and recoveries are sought to be made in our opinion was clearly without authority of law.

6. For the aforesaid reasons we find no merit in this petition. Rule discharged. There shall be be no order as to costs.

**(ANOOP V. MOHTA, J.)** **(F.I.REBELLO, J.)**